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THE HONORABLE:

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

SMACK APPAREL COMPANY,)	CAUSE NO:
4007 E. 32 nd Ave.)	
Tampa, FL 33610)	
)	
Plaintiff,)	
)	
v.)	
)	
SEATTLE HOCKEY PARTNERS, LLC,)	PLAINTIFF’S COMPLAINT FOR
dba Seattle Kraken)	DECLARATORY JUDGMENT
C/O CT CORPORATION SYSTEM,)	
711 Capitol Way S STE 204)	
Olympia, WA, 98501)	JURY DEMAND
)	
and)	
)	
NHL ENTERPRISES, LP)	
C/O NHL ENTERPRISES, INC.)	
1251 Avenue of the America, 47 th Floor)	
New York, NY, United States, 10020)	
)	
and)	
)	
NATIONAL HOCKEY LEAGUE)	
1251 Avenue of the America, 47 th Floor)	
New York, NY, United States, 10020)	
)	
Defendants)	

PARTIES AND JURISDICTION

1. Plaintiff Smack Apparel Company is a business entity incorporated in the State of Florida with its principal place of business located at 4007 E. 32nd Ave. Tampa, Florida 33610, that creates and sells apparel.

2. Defendant Seattle Hockey Partners, LLC, doing business as “Seattle Kraken” is a

1 limited liability company, incorporated in the state of Delaware, with its principal office address
2 located at 16 W. Harrison St. Ste 200, Seattle, Washington, 98119. The Seattle Kraken is a
3 professional hockey club in the Defendant National Hockey League and conducts business in the
4 Western District of Washington.
5

6 3. Defendant NHL Enterprises, LP is a limited partnership, incorporated in the State of
7 Delaware, with its principal place of business located at 1251 Avenue of the America, 47th Floor,
8 New York, NY, United States, 10020. Its beneficial owners are the 32 NHL Clubs or entities under
9 its control, including the Seattle Kraken. NHL Enterprises, LP represents the NHL and its member
10 clubs, including the Seattle Kraken in trademark and related matters. NHL Enterprises, LP also
11 transacts business in the Western District of Washington by engaging in activities there relating to
12 the business of professional ice hockey contests.
13

14 4. Defendant National Hockey League (“NHL”) is an unincorporated association of the
15 32 professional hockey clubs in the United States and Canada. Defendant NHL maintains its
16 headquarters at 1251 Avenue of the Americas, New York, New York 10090 and transacts business
17 in the Western District of Washington by engaging in activities there relating to the business of
18 professional ice hockey contests.
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20 5. Defendants claim to own various trademarks associated with the Seattle Kraken
21 hockey club.
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23 6. Jurisdiction is conferred upon this Court by 28 U.S.C. §2201, this being a civil action
24 for declaratory judgment, and 28 U.S.C. §1331(a), as it involves threatened claims by the Defendants
25 against Plaintiff under the Lanham Act. *See* 15 U.S.C. §1051-1141n.

26 7. This Court has jurisdiction over any threatened state law claims under Washington
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1 state law, *see* RCW 19.77.010 *et seq*; RCW 19.86.020, pursuant to 28 U.S.C. §1367.

2 FACTS GIVING RISE TO PLAINTIFF’S CLAIMS

3 8. Plaintiff is engaged primarily in the business of designing, manufacturing, marketing
4 and selling apparel that contain constitutionally protected artwork and messages that are generally
5 related to college and professional sports and pop culture.
6

7 9. At issue in this case are T-shirts designed by Plaintiff that contain original artwork
8 and humorous and creative messages that relate to, and provide commentary about, the Seattle
9 Kraken hockey club, its fans and pop culture.

10 10. For example, one T-shirt designed and sold by Plaintiff states on the front of the shirt:

11
12 Welcome to the
13 Krak
House
14 Seattle, Washington

15 The text includes an artistic rendering of a red-eye and squid-like appendages that conjure
16 up the image of a sea monster. Plaintiff has a registered copyright for this shirt. (Registration No.
17 VA0002218026)

18 11. Another T-shirt designed and sold by Plaintiff states on the front of the shirt “Straight
19 Outta the Krak House” (a parody of “Straight Outta Compton,” a popular song by the rap group
20 NWA and later a blockbuster feature film) in original and artistic text that features tentacles wrapped
21 around the letters. Plaintiff has a registered copyright for this shirt. (Registration No.
22 VA0002275854).
23

24 12. Another T-shirt designed and sold by Plaintiff states on the front of the shirt,
25 “Krakheads Anonymous.” The back of the shirt reads, “Krakheads Anonymous Meeting Schedule”
26 and states the address of Climate Pledge Arena, where the Seattle Kraken plays its home games, and
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1 then lists the schedule for those games.

2 13. Plaintiff's T-shirts, therefore, feature unique artistic designs and express clever
3 messages and commentary that are constitutionally protected under the First Amendment.

4 14. In addition to using their own unique designs and colorful messaging, Plaintiff
5 displays its own brand name on its products.

6 15. Plaintiff makes these T-shirts available only through its own website or through
7 Amazon.com.

8 16. Defendants, through counsel, sent letters dated September 13, 2021, and October 18,
9 2021, and an email dated January 4, 2022, claiming Plaintiff's T-shirts described in paragraphs 10-12
10 constitute infringement, tarnishment and dilution of various trademarks claimed to be owned by
11 them. That correspondence also demanded that Plaintiff cease production and sales of those T-shirts
12 and produce an accounting of past sales and inventory of the same. In addition, Defendants rejected
13 Plaintiff's claim that its T-shirts did not infringe, tarnish or dilute any trademark owned by
14 Defendants and that they were protected by the First Amendment. Finally, Defendants'
15 communications indicated that if Plaintiff did not accede to Defendants' requests the matter would
16 likely proceed to litigation.

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COUNT I
DECLARATORY JUDGMENT REGARDING FEDERAL TRADEMARK

17 17. Plaintiff incorporates paragraphs 1 through 16 of his complaint as if fully re-written.

18 18. There is an actual and justiciable controversy between Plaintiff and Defendants
19 regarding whether Plaintiff's production and sale of T-shirts, described in paragraphs 10-12, infringe
20 upon, tarnish or dilute any trademark owned by Defendants and whether they are constitutionally
21 protected under the First Amendment.

19. Plaintiff's T-shirts feature unique artistic designs and express clever messages and commentary which entitle them to constitutional protection under the First Amendment.

20. Plaintiff's T-shirts are not likely to cause confusion among consumers between Plaintiff's products and Defendants' products.

21. Plaintiff's T-shirts do not infringe upon any trademark claimed to be owned by Defendants.

22. Plaintiff's T-shirts do not tarnish or otherwise dilute Defendant's trademark rights, if any.

23. Plaintiff is therefore entitled to a declaration that its T-shirts at issue are constitutionally protected under the First Amendment and are not in violation of the Lanham Act, 15 U.S.C. §1051 *et seq.*

COUNT II
DECLARATORY JUDGMENT REGARDING STATE UNFAIR COMPETITION

24. Plaintiff incorporates paragraphs 1 through 23 of his complaint as if fully re-written.

25. There is an actual and justiciable controversy between Plaintiff and Defendants regarding whether Plaintiff's production and sale of T-shirts, described in paragraphs 10-12, infringe upon, tarnish or dilute any trademark owned by Defendants and whether they are constitutionally protected under the First Amendment.

26. Plaintiff's T-shirts feature unique artistic designs and express clever messages and commentary which entitle them to constitutional protection under the First Amendment.

27. Plaintiff's T-shirts are not likely to cause confusion among consumers between Plaintiff's products and Defendants' products.

28. Plaintiff's T-shirts do not infringe upon any trademark claimed to be owned by

Defendants.

29. Plaintiff's T-shirts do not tarnish or otherwise dilute Defendant's trademark rights, if any.

30. Plaintiffs is therefore entitled to a declaration that its T-shirts at issue are constitutionally protected under the First Amendment and are not in violation of state law. *See* RCW 19.77. *et seq*; RCW 19.86.020.

WHEREFORE, PLAINTIFF demands upon Count I, a declaration that its T-shirts at issue are constitutionally protected under the First Amendment and are not in violation of the Lanham Act;

Upon Count II, a declaration that Plaintiff's T-shirts at issue are constitutionally protected under the First Amendment and are not in violation of any state law;

Upon all Counts, the costs and expenses of maintaining this action, and any other relief, whether legal or equitable, to which the Plaintiff may be entitled.

Respectfully submitted,

/s/ Gilbert Levy

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Attorneys for Plaintiff
*subject to admission *pro hac vice*

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and Local Rule 38, Plaintiff
hereby demands a trial by jury as to all counts.

Respectfully submitted,

/s/ Gilbert Levy

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